

CONTRACT #13
RFS # 305.01-001
FA # Pending

State
Division of Business Services

VENDOR:
Tecuity, Inc.



State of Tennessee
Department of State
Division of Information Systems
312 Rosa Parks Avenue
7th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
(615) 253-4013

RECEIVED
JUL 31 2008
FISCAL REVIEW

MEMORANDUM

TO: James White
Executive Director, Fiscal Review Committee

FROM: Joni Kies JK
Information Systems Director, Department of State

DATE: July 30, 2008

SUBJECT: Request for Approval of Non-Competitive Contract

We request approval of a Non-Competitive Contract with Tecuity, Inc. This contract will provide implementation services for consultation, training, configuration, electronic interfaces, and support of the Wyoming Business Entity and Annual Report (BEAR) software in the Department of State.

Thank you for your assistance in this matter.

JK:geh

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	30501-001-09	
2) State Agency Name :	Department of State	
3) Service Caption :	Implementation Services of Wyoming BEAR (Business Entity and Annual Report) Software	
4) Proposed Contractor :	Tecuity, Inc.	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	September 22, 2008	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	June 30, 2011	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,141,200	
8) Approval Criteria : (select one)	<input checked="checked" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	Implementation services for consultation, data conversion, training, configuration, electronic interfaces, and support of the Wyoming BEAR software in the Department of State.	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	<p>a. The existing Corporate Management System (CMS) was implemented in 1988 by OIR. The technology used by CMS is out of date and the Department of State is severely limited in the ability to modify the system to fit new legislative requirements. Entity information for General Partnerships and Limited Liability Partnerships are stored in a separate MS Access DB due to CMS system limitations.</p> <p>b. The State Audit Division of the Comptroller's Office has identified weaknesses in the cash receipting function of the Department of State's current accounting system which is part of the Corporate Management System (CMS). Over a thirteen-year period, this weakness has resulted in an Audit Finding for the Department in its last seven audits.</p> <p>c. Wyoming's Secretary of State has agreed to share the BEAR software with Tennessee for no charge given the understanding that any enhancements made by Tennessee (or Tennessee's contracted resources) will be made available to Wyoming at no charge. In order to maintain the integrity of the code, Wyoming has requested Tennessee to use Tecuity, Inc. for any software changes.</p>	

11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :

This service has not previously been purchased by the Department of State utilizing a sole source contract.

12) Name & Address of the Proposed Contractor's Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Jon Evans, President
Tecuity, Inc.
P.O. Box 445
Smithfield, UT 84335
Phone: 801-542-1888; Toll Free: 888-TECUITY
Fax: 435-563-0547

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

Tecuity to provide some assistance with this section.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

In February 2008 the Department of State brought in a consultant to research options for the replacement of CMS. A review of all 50 States filing websites and communications with all 50 filing offices resulted in identification of the Wyoming BEAR system as a possible replacement for CMS. The BEAR system runs in .Net on SQL Server 2005; technology approved by Tennessee State Standards

The initial focus was the SOSKB software that originated in North Carolina and was subsequently licensed by several States and maintained by a company now named 'FileOne'. Research determined that the SOSKB system is running on out of date technology, and FileOne is in the process of re-writing the entire application in .Net. The new product is scheduled to be released in 2009. FileOne will be selling their new product to the States along with on-going maintenance agreements. FileOne came to Tennessee and demonstrated their planned software in early April 2008. Given the desire to move Tennessee off the CMS system in 2008; the FileOne option was discarded.

There are several States with 'home grown' systems which were also reviewed. Unfortunately with these, Tennessee would not be able to hire the programmers who know the code to configure and implement the software for Tennessee. Hiring programmers to 'learn' the code written by another State was considered high risk and this option was discarded.

Massachusetts has a system which was written by EDS and is supported by EDS. Massachusetts will license their software to another State for \$100K. There would be no guarantee we could get the EDS resources for Tennessee who have first hand knowledge of the Massachusetts software. This is still considered a viable alternative if we were unable to work with the Wyoming software for some reason. Massachusetts filing statutes are not as similar to Tennessee as Wyoming (for example, Massachusetts uses deceptively similar name criteria rather than distinguishable).

There are a few other vendors with software in 1-2 States. None of these offered us the option of getting the software free from the State and then contracting for implementation services as required.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process:
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)


a. Tecuity, Inc. wrote the BEAR software for Wyoming. The resources on staff who wrote the BEAR software are available for the

Tennessee implementation.

- d. Tecuity, Inc.'s hourly rate is \$100 per hour which is less expensive than the cost of hiring a consultant to customize Oracle Financials which would cost \$230 per hour, at a negotiated rate.
- e. The incentive for Wyoming to allow Tennessee to use their software at no charge is to gain the benefit of improvements made to the software by Tennessee. In order to share these enhancements with Wyoming, it is important to maintain a common code base with updates by one firm. Tecuity provides all technical support to Wyoming for the BEAR software. Wyoming does not have any .Net programmers on their staff updating the software.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)


Agency Head Signature

7/30/08
Date

081607

**FAX/EMAIL TRANSMITTAL****to Request OIR Procurement Endorsement**

TO : Jane Chittenden, Director
OIR Procurement & Contract Management **FAX # 741-6164**

FROM : Joni Kies, Director of Inf Systems **FAX # 532-9547**

DATE : July 22, 2008

RFS # 30501-001-09

RE : Procurement Endorsement — RFS 30501-001-09

INFORMATION SYSTEMS PLAN PROJECT IE01F**NUMBER OF FAX PAGES (including cover) : N/A**

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Joni Kies at 532-8467.

Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).

Thank you for your help.

Attachment(s):

RFS 30501-001-09 (fa.doc) Contract

Request for non-competitive contract (request-non.doc)

OIR Endorsement :**OIR Chief Information Officer**

7/30/08

Date

C O N T R A C T S U M M A R Y S H E E T

12-11-07

RFS #	Contract #
305.01-001-09	
State Agency	State Agency Division
DEPARTMENT OF STATE	DIVISION OF BUSINESS SERVICES
Contractor Name	Contractor ID # (FEIN or SSN)
Tecuity, Inc.	<input type="checkbox"/> C- or <input type="checkbox"/> V- 20-3670302

Service Description			
To provide implementation services for consultation, training, configuration, electronic interfaces and support.			
Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
September 22, 2008	June 30, 2013	Vendor	

Mark Each TRUE Statement					
<input type="checkbox"/> Contractor is on STARS			<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts		
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
305.01	04000	082	11		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2009	541,200.00				541,200.00
2010	150,000.00				150,000.00
2011	150,000.00				150,000.00
2012	150,000.00				150,000.00
2013	150,000.00				150,000.00
TOTAL:	1,141,200.00				1,141,200.00

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	SHERLENE HOLT 741-2683	
			State Agency Budget Officer Approval	
TOTAL:				
End Date:				

Contractor Ownership (complete for ALL base contracts— N/A to amendments or delegated authorities)				
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	NOT Minority/Disadvantaged	
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)				
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *		
Non-Competitive Negotiation *		<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)		

* Procurement Process Summary (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)	
In February 2008 the Department of State brought in a consultant to research options for the replacement of CMS. A review of all 50 states filing websites and communications with all 50 filing offices resulted in identification of the Wyoming BEAR system as a possible replacement for CMS. The BEAR system runs in .Net on SQL Server 2005; technology approved by Tennessee State Standards. There are several states with 'home grown' systems which were also reviewed. Unfortunately with these, Tennessee would not be able to hire the programmers who know the code to configure and implement the software for Tennessee. Hiring programmers to 'learn' the code written by another state was considered high risk and this option was discarded.	

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF STATE
AND
TECUITY, INC.**

This Contract, by and between the State of Tennessee, Department of State, hereinafter referred to as the "State" and Tecuity, Inc., hereinafter referred to as the "Contractor," is for the provision of implementation services for consultation, training, configuration, electronic interfaces, and support of the Wyoming BEAR (Business Entity and Annual Report) software in the Department of State, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 20-3670302

Contractor Place of Incorporation or Organization: Utah

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The following chart contains the projected distribution of the maximum hours of available service subject to the conditions set forth herein. The actual distribution of the maximum hours available may vary, based upon the conditions set forth herein and, further, because it is not possible to control all factors that may affect how quickly work progresses.

Service/Milestones	Estimated distribution of hours
PROJECT INITIATION	104
PROJECT INITIATION CONTINGENCY	5
ADMINISTRATION TOOLS	224
ADMINISTRATION TOOLS CONTINGENCY	52
FILING/AMENDMENT MODULE UPDATES PRE CONVERSION	160
FILING/AMENDMENT MODULE UPDATES PRE CONVERSION CONTINGENCY	6
FILING TYPES & STATUS CONFIGURATION	224
FILING TYPES & STATUS CONFIGURATION CONTINGENCY	49
PRE SYSTEM CONFIGURATION & DATA CONVERSION	186
PRE SYSTEM CONFIGURATION & DATA CONVERSION CONTINGENCY	70
HISTORY	164
HISTORY CONTINGENCY	42
DATA CONVERSION & USER TRAINING	288
DATA CONVERSION & USER TRAINING CONTINGENCY	40
DETAILED RECEIPTING SYSTEM DESIGN	180
DETAILED RECEIPTING SYSTEM DESIGN CONTINGENCY	58
INTEGRATED RECEIPTING IN .NET 2.0+	300
INTEGRATED RECEIPTING IN .NET 2.0+ CONTINGENCY	90
REPORTING/BATCH PROCESSING/FILING FEE INTEGRATION	226
REPORTING/BATCH PROCESSING/FILING FEE INTEGRATION CONTINGENCY	69

AMENDMENT MODULE	263
AMENDMENT MODULE CONTINGENCY	43
FILING/AMENDMENT TOOLS/SEARCH MODULES	232
FILING/AMENDMENT TOOLS/SEARCH MODULES CONTINGENCY	55
ANNUAL REPORTS	152
ANNUAL REPORTS CONTINGENCY	28
ONLINE FUNCTIONALITY	264
ONLINE FUNCTIONALITY CONTINGENCY	82
GENERAL APPLICATION CHANGES & AUTOMATIC TOOLS/UTILITIES/JOBS	268
GENERAL APPLICATION CHANGES & AUTOMATIC TOOLS/UTILITIES/JOBS	52
OTHER TASKS	312
OTHER TASKS CONTINGENCY	42
ONSITE IMPLEMENTATION	320
ONSITE IMPLEMENTATION CONTINGENCY	12
YEAR ONE MAINTENANCE & SUPPORT (Ends 6/2009)	1,000
YEAR TWO MAINTENANCE & SUPPORT (Ends 6/2010)	2,000
YEAR THREE MAINTENANCE & SUPPORT (Ends 6/2011)	2,000
YEAR FOUR MAINTENANCE & SUPPORT (Ends 6/2012)	2,000
YEAR FIVE MAINTENANCE & SUPPORT (Ends 6/2013)	2,000
Total projected hours	13,662

- A.3. Prior to training, State will prepare corporate import files, and Contractor will review those files.
- A.4. Contractor will install and train on one workstation. State will install the remaining workstations.
- A.5. Any hardware or network issues that are encountered will be resolved by the State.
- A.6. The State shall have all necessary hardware and software installed and operational prior to Contractor performing services.
- A.7. The State shall provide the training facilities and necessary equipment to train staff and have staff available for training.

B. CONTRACT TERM:

- B.1 This Contract shall be effective for the period commencing on September 22, 2008 and ending on June 30, 2013. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One million one hundred forty-one thousand nine hundred dollars (\$1,141,200). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the

payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Implementation services for consultation, training, configuration, and electronic interfaces for the Wyoming BEAR (Business Entity and Annual Report) software in the Department of State.	\$100 per hour
Maintenance & Support for the Wyoming BEAR (Business Entity and Annual Report) software in the Department of State.	\$75 per hour

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Bob Grunow
BUSINESS SERVICES DIVISION
312 Rosa L. Parks Avenue
6th Floor, W. R. Snodgrass Tower
Nashville, TN 37243-1102

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of State, Business Services Division;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);

- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:

- i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
- ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
- iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
- iv. Amount Due by Service; and
- v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Bob Grunow, Director
Division of Business Services
Department of State
312 Rosa L. Parks Avenue
6th Floor, W. R. Snodgrass Tower
Nashville, TN 37243-1102
Telephone: (615)741-0584
FAX: (615)532-9870

The Contractor:

Jon Evans, President
Tecuity, Inc.
P. O. Box 445
Smithfield, UT 84335
Jon.evans@tecuity.com
Telephone (801)542-1888; Toll Free: 888-TECUITY
FAX: (435)563-0547

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
 - b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
 - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques

obtained and used during the course of providing the services requested under this Contract.

- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.6. Ownership of Software and Work Products.

a. Definitions.

- (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
- (5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques

obtained and used during the course of providing the services requested under this Contract.

- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.7. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.8. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.9. Limitation of Liability. The parties agree that the total liability of the Contractor for breach of this Contract shall not exceed two (2) times the value of this Contract. The value shall be established by the Contract Maximum Liability in Section C.1 and increased by subsequent amendments if any. The foregoing provision shall not limit the Contractor's liability for intentional torts, criminal acts or fraudulent conduct.

IN WITNESS WHEREOF:

TECUITY, INC.

CONTRACTOR SIGNATURE

DATE

Jon Evans, President

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

Department of State

Bob Grunow, Director Business Services Division

DATE

Riley C. Darnell, Secretary of State

DATE

APPROVED:

M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	30501-001-09
CONTRACTOR LEGAL ENTITY NAME:	Tecuity, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	20-3670302

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Jon Evans, President

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

FA CONTRACT INFORMATION SUPPLEMENTFOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B**Contract RFS #**

30501-001-09

Contractor:

Tecuity, Inc.

**SECTION A—
CONTRACTOR IS AN INDIVIDUAL****Is or has the contractor been a state employee?**☐**NO** (no additional information required)☐**YES****Was such employment within the past six months?**☐**NO**☐**YES** (an approved rule exception permitting a contract within six months of employment is also required)**Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?**☐**NO**☐**YES** (the procuring agency general counsel **MUST** sign an analysis of this procurement using the TCRS analysis guidelines)**SECTION B—
CONTRACTOR IS A COMPANY**

(e.g., sole proprietorship, partnership, or corporation)

Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company?☒**NO** (no additional information required)☐**YES****Was such employment within the past six months?**☒**NO**☐**YES** (an approved rule exception permitting a contract within six months of employment is also required)**Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?**☒**NO**☐**YES** (the procuring agency general counsel **MUST** sign an analysis of this procurement using the TCRS analysis guidelines)**CONTRACTOR SIGNATURE****CONTRACTOR****DATE**